

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

DENNIS ROWE

V.

C.A. No. 04 - 246 T

**UNITED STATES MARSHALS
SERVICE, et al.**

Report and Recommendation

Jacob Hagopian, Senior United States Magistrate Judge

Dennis Rowe ("plaintiff"), *pro se*, filed a Complaint pursuant to 42 U.S.C. Section § 1983 and/or Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics, 403 U.S. 388 (1971), on June 21, 2004. On August 10, 2004, this case was dismissed without prejudice. On December 3, 2004, the Court, on plaintiff's request, vacated the dismissal and re-opened the case. Thereafter, on December 13, 2004, the Court ordered the plaintiff to serve the defendants pursuant to Fed.R.Civ.P. 4. Plaintiff, however, never properly served any named defendant in this case.

On September 9, 2005, the Court issued to the plaintiff an Order to Show Cause, in writing, why this case should not be dismissed for a failure to serve. See Fed.R.Civ.P. 4(m). In his Response to the Show Cause Order, plaintiff avers that he mailed a waiver of service forms to the defendants twice. Plaintiff avers that the defendants failed to respond.

Rule 4 of the Federal Rules of Civil Procedure provides that "[t]he plaintiff is responsible for service of a summons and complaint." Fed.R.Civ.P. 4(c)(1). Rule 4 also provides that service shall be made within 120 days after the filing of the complaint. Fed.R.Civ.P. 4(m). If service is not accomplished within that 120 day period, the Court shall dismiss the action without prejudice or

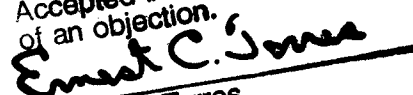
direct that service be accomplished within a specified time. Id.

Here, the Court already directed the plaintiff to serve the defendants. To the date of this writing, plaintiff has failed to do so, despite having ample time. Indeed, plaintiff admits that he has not accomplished service in his Response, indicating that the defendants have failed to respond to the waiver of service forms that he allegedly sent them.

In any event, the plaintiff has had ample opportunity to either hire a constable or serve the defendants by other means but has not done so. Accordingly, I recommend that this action be dismissed without prejudice. Any objection to this Report and Recommendation must be specific and must be filed with the Clerk of Court within ten days of its receipt. Fed.R.Civ.P. 72(b); Local Rule 32. Failure to file timely, specific objections to the report constitutes waiver of both the right to review by the district court and the right to appeal the district court's decision. United States v. Valencia-Copete, 792 F.2d 4 (1st Cir. 1986)(per curiam); Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603 (1st Cir. 1980).



Jacob Hagopian
Senior United States Magistrate Judge
October 17, 2005

Accepted in the absence
of an objection.

Ernest C. Torres
Chief, US District Judge
Date: 11/7/05